

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KATRINA WILLIAMS McCOY

Plaintiff,

V.

STARZ ENCORE GROUP
a/k/a ENCORE MEDIA COMPANY

Defendant.

Civil Action No. 02 CV 5125

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56(b) Defendant Starz Encore Group moves for summary judgment and, for the reasons set forth below and in Defendant's supporting brief filed contemporaneously herewith, respectfully requests that Plaintiff's complaint be dismissed in its entirety.

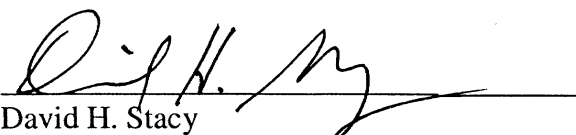
1. Plaintiff is a former employee of Starz Encore Group. In this lawsuit, Plaintiff alleges that she was discriminated against on the basis of her race, African American, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

2. Plaintiff cannot succeed on her claim. Plaintiff's race discrimination claim fails because Plaintiff has failed to establish her *prima facie* case and has failed to demonstrate that Defendant's legitimate non-discriminatory reason for her termination is pretextual.

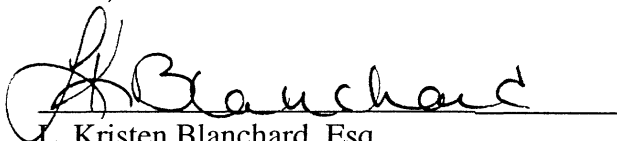
WHEREFORE, Defendant respectfully requests that the Court enter summary judgment dismissing all of Plaintiff's Complaint.

Respectfully submitted this 14th day of July, 2003

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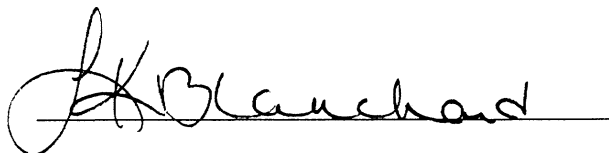
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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2003 a true and correct copy of the above and foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** was served by U.S. mail, first-class postage prepaid, addressed to the following:

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STARZ ENCORE GROUP
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Defendant.

Civil Action No. 02 CV 5125

DEFENDANT'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. Proc. 56(b) and L.R. 7.1(c), Defendant Starz Encore Group
[“Defendant” or “Starz”] respectfully submits its Brief in Support of its Motion for Summary
Judgment.

I. INTRODUCTION

Plaintiff alleges that she was discriminated against on the basis of her race, African American, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* In this case, Plaintiff produces no evidence other than her own speculation, uncorroborated by witnesses or documentary evidence, to establish that racial bias motivated her termination.

As set forth below, Plaintiff's claim fails as a matter of law. Plaintiff has failed to establish the required elements of her Title VII claim. Moreover, Defendant has articulated legitimate performance reasons for her termination, which Plaintiff has failed to show are untrue or unworthy of belief. Plaintiff has not and cannot carry her burden of proof to demonstrate that she was intentionally discriminated against because of her race. Accordingly, Defendant respectfully asks this Court to grant summary judgment in its favor.

II. STATEMENT OF UNCONTESTED FACTS

Defendant attaches its Statement of Uncontested Facts as Ex. A.

III. ARGUMENT

A. Summary Judgment Is Proper Because There Is An Absence Of Evidence Supporting Plaintiff's Case.

A motion for summary judgment will be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c); *see also Hersh v. Allen Products Co., Inc.*, 789 F.2d 230, 232 (3d Cir. 1986). While Defendant bears the burden of showing that there is no genuine issue of material fact, it may meet its burden “by ‘showing’ – that is, pointing out to the district court – that there is an absence of evidence to support the [Plaintiff’s] case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

Plaintiff bears the burden of setting forth specific facts demonstrating that a genuine issue of material fact exists, and that a reasonable fact finder could rule in her favor. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). “Speculation and conclusory allegations do not satisfy this duty.” *Ridgewood Bd. of Educ. v. N.E. for M.E.*, 172 F.3d 238, 252 (3d Cir. 1999). In this case, “the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, [and] there is no ‘genuine issue for trial.’” *Zenith Radio Corp.*, 475 U.S. at 587. As more fully set forth below, Plaintiff was terminated for her continued failure to meet the performance standards of her job. Plaintiff cannot demonstrate that Defendant discriminated against her, and summary judgment is appropriate in this case.

B. Plaintiff Has Failed to Establish Her Prima Facie Case.

Title VII prohibits “discrimination based on race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-16(a). Because Plaintiff has not alleged or brought forth any direct evidence of discrimination, her claim must be assessed under the burden-shifting framework set forth by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Hence, Plaintiff must first establish her *prima facie* case: (1) that she is a member of a protected class; (2) that she is qualified for the position; (3) that she was discharged or suffered an adverse employment action; and (4) the circumstances raise an inference of discrimination. *Geraci v. Moody-Tottrup, Int’l, Inc.*, 82 F.3d 578, 580 (3d Cir. 1996). If Plaintiff makes out her *prima facie* case, “the burden shifts to defendant to articulate a legitimate non-discriminatory reason for the plaintiff’s termination. If defendant articulates such a reason, the plaintiff then must prove that the facially legitimate reason was a pretext for a discriminatory motive.” *Rhett v. Carnegie Ctr. Assocs. (In re Carnegie Ctr. Assocs.)*, 129 F.3d 290, 295 (3d Cir. 1997) (citing *Texas Dep’t of Community Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981)), *cert. denied* 524 U.S. 938 (1998).

1. Plaintiff cannot demonstrate that she was “qualified for her position.”

As set forth below, Plaintiff’s performance in her job was unacceptable, and failed to improve even after Plaintiff was given an Action Plan and an opportunity to correct her deficiencies. *See* § III (B)(3), *infra*. As stated by this Court, Plaintiff must establish that she “performed her job satisfactorily” in order to establish her *prima facie* case for discrimination. *Stove v. Philadelphia Sch. Dist.*, 58 F. Supp.2d 598, 601 (E.D. Pa. 1999), *aff’d* 216 F.3d 1077 (3d Cir. 2000), *cert. denied*.

In this case, Plaintiff does allege that she performed some aspects of her job

satisfactorily.¹ However, she admits that she did not fulfill the requirements of the Action Plan she was given to complete.² She also admits that she had difficulty with understanding the budget,³ completing her expense reports,⁴ and understanding SEG products and sales strategies,⁵ all of which were basic and essential requirements of her job.⁶

By her own testimony, Plaintiff cannot establish that she performed the duties of her job satisfactorily. Her direct supervisor testified that her performance was deficient.⁷ Accordingly she has failed to establish the second element of her *prima facie* case. *See Stove*, 58 F. Supp.2d at 604 (granting summary judgment for defendant because, *inter alia*, plaintiff failed to establish satisfactory job performance); *see also Gaspar v. Merck and Co.*, 118 F. Supp.2d 552 (E.D. Pa. 2000) (summary judgment granted because, *inter alia*, no evidence that Plaintiff was qualified for position due to performance problems).

2. Plaintiff has failed to establish the required inference of discrimination in her discharge.

Plaintiff likewise cannot establish the fourth element of her *prima facie* case: that her termination took place under circumstances creating an inference of unlawful discrimination in employment. Plaintiff puts forth two categories of “evidence” in her failed attempt to show this inference: (1) alleged statements by her supervisors, Tracey Sartino and Robin Feller; and (2) instances of alleged mistreatment by her supervisors and others in Starz management. Neither category of evidence suffices to demonstrate the required inference of discrimination.

¹ *See, e.g.*, Ex. B, p. 85, ll. 11-21; p. 86, ll. 7-12; p. 247, ll. 3-6; p. 248, ll. 14-22; p. 249, ll. 4-17; p. 254, ll. 5-12.

² *See* Ex. A, ¶ 11.

³ *Id.*, p. 252, l. 23 to p. 253, l. 7.

⁴ *Id.* p. 161, ll. 10-20.

⁵ *Id.* p. 256, ll. 10-20.

⁶ *See* Ex. C, p. 49, l. 20 to p. 50, l. 10; p. 173, l. 2 to p. 177, l. 24.

⁷ *Id.*

Plaintiff alleges that Ms. Feller and Ms. Sartino made the following statements regarding her:

- “[C]ould you [directed to an applicant for the trainer position] work for someone like Katrina? Take a look at her. Could you work for her?”⁸
- “Lucia [a Latina District Manager] understood . . . She knew how to do things. She didn’t have a problem learning. I don’t see why she [Plaintiff] does.”⁹
- Ms. Feller stated to Plaintiff, “You cannot do this job.”¹⁰
- Ms. Feller stated to Plaintiff, “[A client] didn’t say a nice comment about you.”¹¹
- Ms. Feller stated to Plaintiff, “I bet [Plaintiff] does not even know how to take notes or remember what happened at the meeting; let’s see what she can do.”¹²

However, Plaintiff herself attributes no racial meaning to any of these comments. With respect to the first statement, she objected to it because she believed she should have been the one asked if she could work with the applicant, and not the other way around.¹³ Regarding the second comment, she objected to the implication that she “was incompetent” while Lucia “was able to learn.”¹⁴ As to the last three statements, Plaintiff offered them as instances of “extreme cruelty” by Ms. Feller towards her, but never attributed racial bias to the comments.¹⁵

Fundamentally, none of these comments contain any reference to race, and are insufficient to support an inference of discrimination. *See e.g., Molthan v. Temple University – of Commonwealth System of Higher Education*, 778 F.2d 955, 962-963 (3d. Cir. 1985)

⁸ Ex. B, p. 105, l. 14-15.

⁹ *Id.* p. 239, l. 24 to p. 240, l. 3.

¹⁰ *Id.* p. 153, ll. 1-3.

¹¹ *Id.* p. 230, l. 22 to p. 231, l. 16.

¹² *Id.* p. 232, l. 16-21.

¹³ *Id.* p. 105, ll. 15-17.

¹⁴ *Id.* p. 239, ll. 10-12.

¹⁵ *Id.* p. 152, l. 20 to p. 153, l. 5; p. 230, l. 19 to p. 232, l. 23

(statements containing no reference to gender do not support inference of discrimination in sex discrimination case). Such statements are, at best, evidence that Plaintiff's supervisors had concerns about her performance – nothing more.

Plaintiff also alleges numerous instances of poor treatment, which she attributes to racial bias. What Plaintiff's allegations lack in factual support she attempts to compensate for with sheer volume, and her own ideas of imputed motive. She alleges that: her managers were "hostile" and "cruel";¹⁶ her managers failed to hire a trainer candidate to report to Plaintiff,¹⁷ Ms. Feller was not supportive during a presentation Plaintiff made at an account review meeting; and Plaintiff believed that Ms. Sartino "didn't want [Plaintiff] near her during lunch or dinners" at the same meeting,¹⁸ Ms. Sartino showed her wedding pictures to "everybody and skipped over [Plaintiff],"¹⁹ Plaintiff's managers withheld information from her,²⁰ Plaintiff believed that she was required to take over the work of two District Managers, without the "required" support of two trainers to report to her,²¹ Plaintiff alleged that she was reprimanded "every time" she attempted to use Starz corporate and administrative resources,²² Ms. Sartino allegedly removed a marketing coordinator from Plaintiff's project because she "wanted [Plaintiff] to fail and did not want [Plaintiff] with the company because of [her] race,"²³ Ms. Sartino "did not want to be with [Plaintiff]" on a business trip,²⁴ and Plaintiff's managers "sabotaged" her in her job.²⁵

¹⁶ *Id.*, p. 105, l. 1-12; 151, l. 8 to p. 153, l. 5; p. 230, l. 15 to p. 231, l. 16; p. 232, l. 16-21; p. 233, l. 4-13.

¹⁷ *Id.* p. 102, l. 24 to p. 104, l. 7.

¹⁸ *Id.* p. 180, l. 5 to p. 182, l. 6.

¹⁹ *Id.* p. 184, ll. 1-3.

²⁰ *Id.* p. 202, l. 21 to p. 204, l. 4; p. 206, l. 4 to p. 207, l. 9.

²¹ *Id.* p. 66, l. 6 to p. 67, l. 17; p. 68, l. 2-7.

²² *Id.* p. 132, l. 8-14; p. 218, l. 4-7.

²³ *Id.* p. 149, l. 3-20.

²⁴ *Id.* p. 176, l. 14-20.

²⁵ *Id.* p. 121, l. 21 to p. 122, l. 14; p. 97, l. 18-21; p. 123, l. 11 to p. 126, l. 21.

Even if this conduct had occurred just as Plaintiff describes, it does not create an inference of **racial discrimination**. Plaintiff has presented no witness or documentary evidence that corroborates any of these incidents, and no evidence that racial bias played a role in them. When Plaintiff's subjective beliefs about motivation are removed, what remains is no more than evidence that Plaintiff felt unsupported in her job, did not feel included in some respects at work functions, and may have had trouble getting along with her managers. The alleged conduct has no racial component or connotation. Where, as here, a plaintiff can only point to instances where she **felt** mistreated, and she **chooses** to label such treatment as racial discrimination, her own conclusory allegations are insufficient to survive summary judgment. *Cf. Billet v. CIGNA Corp.*, 940 F.2d 812, 816 (3d Cir. 1991) (plaintiff's unsupported statement that discrimination motivated employment action does not make it so).

Furthermore, in evaluating whether an inference of discrimination exists in this case, the Court should consider the fact that it was the same two managers who made the decisions to hire and fire the Plaintiff.²⁶ Additionally, the Court should consider that Plaintiff was hired at a significantly higher salary than that offered by the same managers to a Caucasian District Manager hired shortly after Plaintiff. *See* Ex. A. ¶ 7. While such evidence is not presumptive of a lack of discrimination, it is proper evidence for the court to consider it in weighing whether an inference of discrimination exists. *See Waldron v. SL Indus.*, 56 F.3d 491, 496 (3d Cir. 1995).

C. Defendant Has Produced Non-Discriminatory Reasons for Termination and Plaintiff Has Failed to Establish Pretext.

1. Defendant Terminated Plaintiff for Deficient Performance.

²⁶ *See* Ex. C, p. 33, ll. 3-20; p. 35, ll. 16-21; p. 156, l. 2 to p. 159, l. 20.

Even if Plaintiff could demonstrate a *prima facie* case for race discrimination, Defendant has met its burden of production in identifying a legitimate, non-discriminatory reason for Plaintiff's discharge: her continued inability to meet the performance standards of her position.

Plaintiff began working for Defendant in December, 1999. It is uncontested that seven months later she was placed on a 30/60/90 day "Action Plan" which set forth performance requirements where Plaintiff was deficient and needed to improve:

- increase knowledge of territory
- develop and implement marketing plans for Boston and Pittsburgh for the remainder of 2000;
- increase sales and product knowledge;
- understand the budget
- hire two trainers in the Philadelphia office;
- improve organizational skills.

See Ex. D. Plaintiff admits that she did not meet all of the requirements of the Action Plan. She admits that:

- she failed to compile the data required in the "key file and binder information";²⁷
- she failed to compile the required information for the "key system information" sheet;²⁸
- she did not complete the Prometheus model data;²⁹
- she failed to meet deadlines imposed by the Action Plan.³⁰

Plaintiff's contentions that she met some of the requirements of the Action Plan do not establish that her performance was legally sufficient:

[T]here is nothing unreasonable about an employer implementing an improvement plan if an employee does not meet **all** job performance expectations. In any case, an employer can reasonably expect an employee to meet expectations more than [only part] of the time.

²⁷ Ex. B, p. 244, l. 20 to p. 245, l. 1.

²⁸ *Id.* p. 245, ll. 12-22.

²⁹ *Id.* p. 246, ll. 12-24.

³⁰ *Id.* p. 251, ll. 5-10.

Bullock v. Children's Hosp., 71 F. Supp.2d 482, 484 n.3 (E.D. Pa. 1999) (emphasis in original) (summary judgment granted for defendant where plaintiff failed to establish *prima facie* case). Moreover, Plaintiff's subjective "disagreement with [her supervisor's] assessment of her job performance is not sufficient to raise a presumption of discrimination." *Id.* at 490. "To make out a *prima facie* case of discrimination requires more than such speculation." *Id.*

It is uncontested that two months after receiving the Action Plan, Plaintiff was given a Corrective Discipline Memorandum setting forth areas where her performance remained deficient:

- Not completing assignments on time;
- Poor planning and prioritizing of accounts and work assignments;
- Work not accurate and complete;
- Lacks good understanding of products and sales strategies;
- Has failed to deliver information due in first 30-days of the 30/60/90-day Action Plan of 7/27/00 and has not communicated progress due on the 60/90 day portion of the Action Plan.

See Ex. E.

Following Plaintiff's continued failure to perform, Ms. Sartino and Ms. Feller had a discussion regarding Plaintiff's performance. Ex. A, ¶ 13. At that point, the decision was made by Ms. Sartino, with Ms. Feller's approval, to terminate Plaintiff's employment. Ex. A, ¶¶ 14-15. An employer's termination of an employee for repeated performance failures is legitimate. *See Rose v. Woolworth Corp.*, 137 F. Supp.2d 604 (E.D. Pa. 2001).

2. Plaintiff Has Failed to Establish Pretext.

Because Defendant has articulated a non-discriminatory reason for Plaintiff's discharge, Plaintiff must come forward with specific "evidence, direct or circumstantial, from which a fact finder would reasonably either: (1) disbelieve the employer's articulated legitimate reasons; or

(2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." *Jones v. School Dist.*, 198 F.3d 403, 413 (3d Cir. 1999), (quoting *Fuentes v. Perskie*, 32 F.3d 759, 764 (3d Cir. 1994)):

the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since **the factual dispute at issue is whether discriminatory animus motivated the employer** . . . Rather, the nonmoving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable fact finder could rationally find them unworthy of credence.

Id. at 413, quoting *Keller v. Orix Credit Alliance*, 130 F.3d 1101, 1108-09 (3d Cir. 1997) (en banc) (emphasis supplied).

Here, Plaintiff has produced no **evidence** that Defendant "proffered nondiscriminatory reason 'did not actually motivate' [its] action." *Simpson v. Kay Jewelers*, 142 F.3d 639, 644 (3d Cir. 1998). All Plaintiff has put forth is her own subjective belief that racial bias motivated her termination:

- Q: Do you believe they [Plaintiff's supervisors] were racially motivated when they decided not to hire Todd? [a candidate for the open trainer position, the direct report to Plaintiff].
- A: I absolutely believe that **all** of my experiences with Starz Encore was [sic] racially motivated, and specifically with Todd Goldman. Yes, I do.
- Q: What made you believe that the situation with Todd Goldman was racially motivated?
- A: Because of the culture of the company. They did not want me there. I felt like because of my race and my color, they wanted me gone, and they felt that if I – if they put all the burden of doing all the work on me, that I would disappear.
- Q: The reason they wanted you gone was because of your race –
- A: Because of my race. . . .

Ex. B p. 102, l. 24 to p. 103, l. 16 (emphasis supplied). Throughout her deposition, Plaintiff's testimony follows a similar pattern: she states her feeling that discrimination motivated some alleged mistreatment, but presents no factual evidence substantiating her belief. Plaintiff has

identified no witness or document to substantiate her allegations of bias. In order for this kind of indirect evidence to show pretext, it “must be enough to support a **reasonable** inference that the reasons given for the employment decision are pretextual. Merely reciting that [a discriminatory motive] was the reason for the decision **does not make it so.**” *Billet*, 940 F.2d at 816 (emphasis in original in part, supplied in part). Plaintiff’s own subjective belief that she should not have been terminated, or that racial bias motivated anyone’s treatment of her, is not evidence of discrimination. *See Gaspar*, 118 F. Supp.2d 552 (summary judgment for defendant granted where no pretext; employee had history of consistently poor performance; and no contradictory evidence existed except employee’s own disagreement with evaluations).

3. Plaintiff Has Failed to Produce Indirect Evidence of Pretext.

Likewise, Plaintiff cannot show pretext because there is no evidence that demonstrates that Defendant has previously discriminated against her, or has discriminated against other employees within a protected class, or that Defendant has treated more favorably similarly situated persons not within a protected class. *See Fuentes*, 32 F.3d at 765.

a. Plaintiff cannot produce any evidence that Defendant discriminated against her previously.

As set forth above, Plaintiff alleges that her supervisors and others mistreated Plaintiff prior to her termination. *See* § III(B)(2), *supra*. Even if every allegation of mistreatment Plaintiff puts forth is true, she cannot identify evidence showing racial bias, as these examples from her deposition attest:

- Q: Is there anything specific that you can point to that makes you think the decision not to hire Todd Goldman was racial?
- A: The mere fact that it was not justified for the [sic] them not to hire him. The only purpose for them not hiring Todd Goldman is so that I can continue having a

tremendous amount of work load, more than my white female counterparts, and it was extremely difficult to take on that burden.

Q: How do you know that was the only reason?

A: How do I know that was the only reason, it was the only reason. It's the culture of the company . . .

Ex. B, p. 103, l. 22 to p. 104, l. 12.

Q: What makes you think that that [the length of time it took to hire a trainer to report to Plaintiff] was intentional sabotage by someone?

A: Because we did not get a trainer. We were not able to take the time and work together as a group. It was not a – the company knows that I needed a trainer; I need a trainer.

Q: Couldn't there have been a reason other than sabotage?

A: What would that be?

Q: You can't think of any other reason?

A: They didn't want me there because of my race, specifically.

* * *

Q: What makes you think that the company not providing you more people to help with the hiring process was racially motivated?

A: It's not a one-person job. The company knows that. . .

Id. p. 126, l. 7 to p. 127, l. 1. Plaintiff's deposition is replete with similarly cagey responses, where she does not answer the question posed, but instead responds with broad allegations of discrimination without any facts. Again, it should be noted that no witness deposed or document produced in this case substantiates Plaintiff's allegations of bias. Her evasiveness cannot disguise the reality that she has **no facts** supporting her allegations of racial bias.

Plaintiff's reference to innocuous comments by her supervisors are unavailing to show pretext for the same reason that they do not show an inference of discrimination in this case. *See* § III(B)(2), *supra*. Moreover, "there is no evidence whatsoever that these comments were linked, temporally or otherwise, to the decision to fire plaintiff." *Rose*, 137 F. Supp.2d at 610 (racist remarks including: African American community a "baby factory," African Americans incapable of thinking analytically, and instructions to African American plaintiff not to talk to

white women found insufficient evidence of pretext). *See also Bullock*, 71 F. Supp.2d at 486 (supervisor's remarks that people from United Arab Emirates are "ignorant" and "should speak American" inadequate to constitute pretext evidence); *Burks v. City of Philadelphia*, 950 F. Supp. 678, 686-87 (E.D. Pa. 1996) (disparaging remarks about African Americans generally not direct evidence of employment discrimination).

In the above-cited cases, the courts were confronted with blatantly racist remarks, and found them insufficient to constitute pretext evidence. In comparison, the remarks Plaintiff relies upon contain no direct or indirect reference to race. It is obvious that statements such as "[y]ou cannot do this job," "[a client] didn't say a nice comment about you," "I bet [Plaintiff] does not even know how to take notes," etc., are "not sufficient to create a genuine issue of fact with regard to pretext." *Rose*, 137 F. Supp.2d at 610. This is particularly true where there is no evidence linking these statements to Plaintiff's termination. "Stray remarks . . . by decisionmakers unrelated to the decision process are rarely given great weight . . ." *Ezold v. Wolf, Block, Schorr & Solis-Cohen*, 983 F.3d 509, 545 (3d Cir. 1992).

Moreover, it is uncontested that Plaintiff never reported these comments or her "concerns" about racial discrimination to anyone in management, or to the Human Resources Department at Starz. In fact, when asked whether she had reported her concerns, Plaintiff responded, "**I had not been discriminated against**, so I just expressed it to my team member [rather than reporting it to Human Resources]." Ex. B, p. 145, ll. 20-22 (emphasis supplied). Clearly, Plaintiff's own belief that she suffered from racial bias is ambivalent, and cannot support a finding of pretext.

b. Plaintiff has failed to establish that Defendant discriminated against other persons in a protected class.

In her deposition, Plaintiff described the “culture” of Defendant as one in which African American employees are not welcomed:

- Starz “typically does not do well with black females. It’s a culture thing.” Ex. B, p. 184, ll. 20-21.
- “The history – the retention of keeping black employees of that company, you know, there’s – obviously, there’s some numbers. It’s extremely poor. It’s very well-known throughout the industry about Starz Encore’s history with black employees. They don’t want black employees there. They keep them there for a short period of time, and then they terminate them.” *Id.* p. 104, ll. 17-24.

Plaintiff identifies no evidence substantiating these sweeping condemnations. These allegations are not corroborated by any witnesses, or by any documentary evidence. Plaintiff’s enthusiasm in criticizing Defendant does not compensate for the complete absence of evidence to substantiate her allegations.

In a futile attempt to bolster this point, Plaintiff references former Starz employees who allegedly were terminated because of their race: Susan Lewis, an African American woman who was a Regional Vice President;³¹ Dee Filey Davis, an African-American woman;³² and former Manager of Production Lee Gashmaxey, an African American woman.³³

However, by Plaintiff’s own testimony, she has no foundation for her claim that these women were terminated because of their race:

Q: If she [Ms. Lewis] was terminated, do you know why?

A: Because of her race. I would say that Susan was terminated because of her race.

³¹ Ex. B, p. 108, l. 23 to p. 109, l. 8.

³² *Id.* p. 294, l. 13 to p. 295, l. 13.

³³ *Id.* p. 295, l. 18 to p. 296, l. 12.

Q: Do you have any firsthand knowledge of the circumstances of her leaving the company?

A: **I don't have any** – I was not employed at the company upon Susan Lewis's termination. . .

Q: Has anyone told you the circumstances of her leaving, specifically?

A: **No.**

Q: Do you know of any problems that she had at the time she left, problems with the company or the company had with her?

A: **No.**

Ex. B, p. 110, l. 15 to p. 111, l. 10 (emphasis supplied). In fact, Plaintiff admitted that Ms. Lewis was promoted while Plaintiff was still employed with Defendant:

Q: In fact, while you were there, Susan was a director in the Philadelphia office and then was promoted to vice president?

A: That's correct.

Q: Why do you think they would promote her to an officer position if they were biased against her because of her race?

A: . . . I think out of desperation of needing to fill the position to get somebody to assume that role . . . that's why Susan Lewis was handed that position.

Id. p. 111, l. 23 to p. 112, l. 12.

Regarding Ms. Davis and Ms. Gashmaxey, Plaintiff testified, "by the way, I don't know either one of those ladies." *Id.* p. 296, ll. 22-23. Plaintiff's allegations regarding all three of these former African American employees are utterly without factual support.

c. Plaintiff cannot show that Defendant treated similarly situated persons, not in a protected class, more favorably than Plaintiff.

Finally, Plaintiff cannot identify any similarly situated employees who were treated more favorably than Plaintiff. *See Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 258 (1981) (*citing McDonnell Douglas*, 411 U.S. at 804) (employee can demonstrate pretext by showing similarly situated employees "were not treated equally"). "To be deemed 'similarly situated' the individuals with whom a plaintiff seeks to be compared must have 'engaged in the

same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it.” *Bullock*, 71 F. Supp.2d at 489.

Plaintiff cannot identify a single similarly situated Starz employee whose performance was poor and who was **not** terminated.

In her deposition, Plaintiff identified two categories of individuals who allegedly received favorable treatment as compared to Plaintiff: (1) a Caucasian trainer, Melissa Diehlman, who left Defendant shortly after Plaintiff was hired;³⁴ and (2) Caucasian District Managers Julie Pieper, Colleen Willkom and Noel Haberman.³⁵ However, Plaintiff has not established any of these individuals as similarly situated to herself, and their alleged treatment by Defendant is not legally relevant.

Ms. Diehlman was a woman who reported to Plaintiff in the early months of her employment.³⁶ She was Plaintiff's subordinate, and her job was clearly different from Plaintiff's. Obviously, she had a different direct supervisor than Plaintiff, in that Ms. Diehlman reported to her. Moreover, Plaintiff has identified no evidence that Ms. Diehlman's job performance was – like Plaintiff's – unacceptable. Plaintiff has identified no evidence that Ms. Diehlman was subject to an Action Plan, Corrective Discipline Memorandum, or any other disciplinary measure. In short, Ms. Diehlman is clearly not similarly situated to Plaintiff. “[A] comparison among non-similarly-situated employees does not establish that an employer has discriminated against the plaintiff.” *Bullock*, 71 F. Supp. 2d at 490.

³⁴ *Id.* p. 240, l. 17-19.

³⁵ *Id.* p. 96, l. 5-21; p. 150, l. 14 to p. 151, l. 12; p. 213, l. 19 to p. 214, l. 9.

³⁶ *Id.* p. 28, l. 19 to p. 30, l. 7.

The three Caucasian District Managers Plaintiff identifies shared the same job title as Plaintiff. Regarding these individuals, Plaintiff claims that they had lighter work loads,³⁷ trainers to assist them,³⁸ support from management,³⁹ and were “never given unrealistic expectations.”⁴⁰

However, Plaintiff admitted that she only observed the treatment received by these individuals by overhearing telephone calls between Ms. Sartino and two of them [Ms. Haberman and Ms. Willkom].⁴¹ She admitted she had “no idea” how many call centers Ms. Haberman had,⁴² while admitting that the number of call centers would affect a District Manager’s work load.⁴³ She admitted that she did not recall if there were open trainer positions under any of these District Managers, saying, “I can’t assume. I mean, that would be like guessing. I have no idea.”⁴⁴ In fact, Plaintiff admitted that she “didn’t know what anybody else was doing” in response to a question comparing her performance with that of the other District Managers.⁴⁵

Moreover, there is no evidence that any of these individuals was comparable to Plaintiff in terms of their performance. She has identified no evidence that these women were given an Action Plans. There is no evidence that they were given Corrective Discipline Memorandums. Plaintiff has produced no evidence, other than her “own unique interpretation of [her comparators’] job description[s]” to establish these individuals as similarly situated. *Stove*, 58 F. Supp.2d at 602. Such “evidence” is legally insufficient. *Id.*

³⁷ *Id.* p. 103, l. 22 to p. 104, l. 7.

³⁸ *Id.* p. 86, l. 19 to p. 87, l. 17; p. 96, l. 5-8, p. 127, l. 7-10.

³⁹ *Id.* p. 96, l. 9-21; p. 150, l. 14 to p. 151, l. 12; p. 213, l. 19 to p. 214, l. 11.

⁴⁰ *Id.* p. 214, l. 12-22.

⁴¹ *Id.* p. 215, l. 3-9.

⁴² *Id.* p. 224, l. 4-14.

⁴³ *Id.* p. 224, l. 18-22.

⁴⁴ *Id.* p. 90, l. 10-13.

⁴⁵ *Id.* p. 84, l. 14 to p. 85, l. 9.

Even if the decision to terminate Plaintiff was wrong or based upon incorrect information, the question before this court is not whether Defendant is “wise, shrewd, prudent, or competent” in its employment practices. *Fuentes*, 32 F.3d at 765. Indeed, it is not the duty of a court to analyze the sufficiency or propriety of the discharge decision. The court does “not sit as a super-personnel department that re-examines an entity’s business decisions.” *Brewer v. Quaker State Oil Ref. Corp.*, 72 F.3d 326, 332 (3d Cir. 1995). Rather, the Court must determine whether the reasons proffered by Defendant for Plaintiff’s discharge were truthful reasons. “We recognize[] that an employer may have any reason or no reason for discharging an employee so long as it is not a discriminatory reason.” *Id.*

IV. CONCLUSION

The ultimate burden of proof in discrimination cases “remains at all times with the plaintiff.” *Id.* Defendant does not have the burden of proving the absence of discriminatory intent. *Board of Trustees v. Sweeney*, 439 U.S. 24 (1978). Here, Plaintiff’s claim fails because she has presented no factual evidence that Defendant “intentionally discriminated” against her because of her race. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981). She has produced nothing but her own speculation and opinion that racial bias motivated her termination.

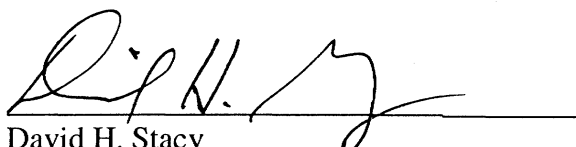
In this case, the undisputed facts are clear: Plaintiff’s performance became deficient shortly after she began working at Defendant. She was given the opportunity to improve her performance, and she failed to do so. Consequently, she was terminated.

Because Plaintiff can identify no evidence other than a “metaphysical doubt as to the material facts” in this case, her claim should not be allowed to proceed. *Matsushita Elec. Indus.*

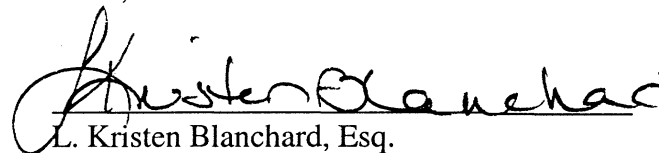
Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Accordingly, summary judgment is proper in this case.

Respectfully submitted this 14th day of July, 2003

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2003 a true and correct copy of the above and foregoing **DEFENDANT'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT** was served by U.S. mail, first-class postage prepaid, addressed to the following:

Sharon Gilbert Timm, Esq.
350 South Main Street
Penn's Court – Suite 111
Doylestown, PA 18901

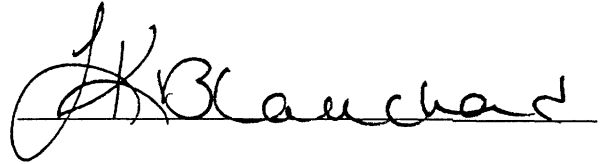
A handwritten signature in black ink, appearing to read "J. Blanchard", written over a horizontal line.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KATRINA WILLIAMS McCOY

Plaintiff,

v.

STARZ ENCORE GROUP
a/k/a ENCORE MEDIA COMPANY

Defendant.

Civil Action No. 02 CV 5125

**DEFENDANT'S STATEMENT OF UNCONTESTED FACTS
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant Starz Encore Group ["Defendant" or "Starz"] respectfully submits its Statement of Uncontested Facts in Support of its Motion for Summary Judgment.

1. Plaintiff sent a letter to Starz Vice-President Robin Feller on October 21, 1999, in application for a District Manager position with Defendant. McCoy Deposition, Ex. B, p. 306, l. 17 to p. 307, l. 21.
2. Starz Director Tracey Sartino interviewed her for the District Manager position. Sartino Deposition, Ex. C, p. 22, l. 20 to p. 23, l. 19.
3. Plaintiff was also interviewed by Ms. Feller. *Id.* p. 24 ll. 5-17.
4. Ms. Sartino made the decision to hire Plaintiff, and Ms. Feller called her with the offer. Ex. B, p. 108, ll. 3-14.
5. The starting salary offered to Plaintiff was \$60,000. Ex. C, p. 33, l. 24.
6. This salary was near the top of the range of \$40,000 to \$65,000 salaries offered to new District Managers. *Id.* p. 34, ll. 2-9.
7. This salary was \$5,000 to \$10,000 more than the salary offered to a Caucasian District

Manager Colleen Willcom, who was hired shortly after Plaintiff. *Id.* p. 28, l. 16 to p. 29, l. 10; p. 35, ll. 4-7.

8. Plaintiff accepted the job offer, and began work as District Manager for the East Coast region of Starz on December 30, 1999. Ex. B, p. 9, ll. 7-14; p. 286, ll. 2-5.

9. Ms. Sartino was Plaintiff's direct supervisor when she worked at Defendant. *Id.* p. 17, l. 24 to p. 18, l. 2.

10. On July 26, 2000, Plaintiff was given an Action Plan ["the Action Plan"]. *Id.* p. 242, l. 23 to p. 243, l. 7; *See* Action Plan, Ex. D.

11. Plaintiff did not meet all of the improvement objectives and deadlines set forth in the Action Plan. *Id.* p. 244, l. 20 to p. 245, l. 1; p. 245, ll. 12-22; p. 246, ll. 12-24; p. 251, ll. 5-10.

12. On September 28, 2000, Plaintiff was given a Corrective Discipline Memorandum. *Id.* p. 254, ll. 16-19. *See* Corrective Discipline Memorandum, Ex. E.

13. Following expiration of the 90-day portion of the Action Plan in October, 2000, Ms. Sartino and Ms. Feller had a discussion regarding Plaintiff's job performance. Ex. C, p. 156, ll. 2-12

14. Ms. Sartino decided that Plaintiff would have to be terminated. *Id.* p. 156, ll. 8-14.

15. Ms. Feller supported Ms. Sartino's decision. *Id.* p. 158, ll. 20-21.

16. Plaintiff was terminated. *Id.* p. 160, ll. 1-6.

17. Plaintiff's last date of employment was November 15, 2000. Ex. B, p. 286, ll. 6-8.

EXHIBIT B

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA
3

4 KATRINA WILLIAMS McCOY, : CIVIL ACTION
5 Plaintiff, : NO. 02-CV-5125
6 vs :
7 STARZ ENCORE GROUP a/k/a :
8 ENCORE MEDIA COMPANY, :
9 Defendant. :

10
11 - - -
12 THURSDAY, APRIL 3, 2003
13 - - -

14 Oral deposition of KATRINA WILLIAMS
15 McCOY taken at the law offices of MONTGOMERY,
16 McCRACKEN, WALKER & RHOADS, LLP, 123 South Broad
17 Street, Avenue of the Arts, Philadelphia,
18 Pennsylvania, on the above date, beginning at 10:04
19 a.m., before Susan Lauer, Court Reporter-Notary
20 Public, there being present.

21 - - -
22
23 LIPBERTY DEPOSITION SERVICES
407 LODGES LANE
24 ELKINS PARK, PENNSYLVANIA 19027
(215) 782-9960

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ALSO PRESENT: SHERYL ANDERSON

- - -

1 Q. In your whole life?

2 A. As far as I recall, I've never been
3 discriminated against.

4 Q. Are you limiting that to employment?

5 A. As far as I recall, I've never been
6 discriminated against at all.

7 Q. Now, as I understand it, you began
8 your employment with Starz Encore Group on
9 December 30, 1999; is that right?

10 A. Yes.

11 Q. You were hired as a district
12 manager?

13 A. I was hired as district manager for
14 the East Coast region, yes.

15 Q. What were your job responsibilities
16 as a district manager?

17 A. As a district manager for Starz
18 Encore Group, I was responsible for the --
19 overseeing trainers, two trainers who would go into
20 the systems, the AT&T cable systems to do product
21 knowledge training.

22 I was also responsible for the
23 movie-based incentives with the systems. I was
24 responsible, primarily, for acquisitions, growing

1 either by trainers or by you?

2 A. Can you reword that question,
3 please?

4 Q. Sure. You were part of the AT&T
5 team, correct?

6 A. Yes, I was.

7 Q. And the AT&T team had two directors,
8 and a number of district managers working for each
9 of those directors; fair enough?

10 A. Yes.

11 Q. As a general matter, that was true?

12 A. Can you repeat that last point you
13 made?

14 Q. The general structure consisted of
15 two directors, and each of the directors had part of
16 the country geographically?

17 A. Yes.

18 Q. And each of the directors had a
19 number of district managers who they supervised?

20 A. Yes.

21 Q. And you were one of those district
22 managers on the AT&T team?

23 A. Yes.

24 Q. And your director was Tracey

1 Sartino, right?

2 A. Yes.

3 MR. STACY: That's Tracey, E-Y,

4 S-A-R-T-I-N-O.

5 BY MR. STACY:

6 Q. And the organizational structure
7 included a vice president above Tracey whose name
8 was Robin Feller; is that right?

9 A. A regional vice president.

10 Q. Right.

11 A. Whose name was Robin Feller.

12 Q. Okay. So the trainings that were
13 done in the field at the systems' offices on the
14 AT&T team that worked for Tracey, on Tracey's side,
15 were done by trainers and in some cases by you, but
16 no one else; is that right?

17 A. I need you to repeat that, please.

18 Q. You said that no district managers
19 did any trainings except you, right?

20 A. I never saw. You asked me if I
21 saw. I never saw any district managers do any
22 trainings. I can only speak of my experience.

23 Q. And I apologize. That's exactly
24 what I asked you, and I stand corrected. Let me ask

1 Q. By June?

2 A. I would say yes. As far as I can
3 recall, I would say yes.

4 Q. By June. That's what you said.

5 A. Yes.

6 Q. My question now is, how long before
7 June, if at all, did you have that thorough working
8 knowledge? And you don't have to give me a date.
9 You can say after three months' work I thought I had
10 a full working knowledge or the first several months
11 or by spring. Just describe it honestly, to the
12 extent you can remember.

13 A. Yeah. I would say before June.
14 Definitely before June, I knew the channels. I knew
15 the product before June.

16 Q. Can you be any more precise than
17 that? In fact, let me help you a little bit.

18 A. Okay.

19 Q. Approximately March 1, Melissa
20 Diehlman came on board as your second trainer. Do
21 you recall that?

22 A. Yes.

23 Q. By the time she arrived, did you
24 have a thorough working knowledge of the products

1 you were responsible for?

2 A. I want to say I don't know -- let me
3 answer the question prior to this. Melissa Diehlman
4 did come on board. The exact date of March 1, I
5 can't confirm that. I don't remember specifically
6 at this time what date Melissa Diehlman did come on
7 board.

8 Q. I'm asking you to accept, for the
9 sake of the question, that the records reflect that
10 it was on or about the 1st of March, which would be
11 two months into your employment.

12 Given the fact that it was your
13 responsibility to supervise her, I'm wondering if
14 you had what you consider to be a full working
15 knowledge of the products you were responsible for
16 at that time or was it sometime later that you felt
17 you had the full working knowledge?

18 A. Can we go back to the previous
19 question? I believe Melissa Diehlman started in
20 February. I don't believe that Melissa Diehlman
21 started on or about March 1.

22 Q. Why don't we do this, regardless of
23 when she started, when she arrived and you took
24 responsibility for supervising her, did you then

1 have a full working knowledge of the products that
2 you were required -- that you were responsible for
3 and that she was going to have to train people on?

4 A. When Melissa Diehlman came on board,
5 I was only with the company for probably two months,
6 and at that time, I was still in training myself,
7 learning the company's product.

8 Q. So then it would be somewhere
9 between late February and June that you reached the
10 point of having a thorough working knowledge of your
11 products?

12 A. When you say products, are you
13 talking specifically about the company's channels?

14 Q. I'm talking about the products that
15 you described to me. I asked you what products you
16 were responsible for as a district manager, and you
17 said they were channels, and you named three or four
18 of them for me. You said you couldn't remember the
19 others.

20 A. Okay. Can you repeat the initial
21 question then? I just wanted to make sure that I
22 understand you.

23 Q. Well, you said that -- I'm using
24 your words. You said that the trainers were

1 positions?

2 A. Can you -- I don't understand what
3 you're saying.

4 Q. Okay.

5 A. That positioned two trainers.

6 Q. What do you mean it had two
7 trainers?

8 A. That reported to it. That position,
9 the requirement was for two trainers. It wasn't
10 just a luxury that the company was giving to me, it
11 was a requirement because the territories were split
12 up. Not one trainer can perform all the trainings
13 in Boston, as well as some of the other geographical
14 areas.

15 Q. Who told you that it was a
16 requirement?

17 A. I was told that when I was
18 interviewed.

19 Q. Requirement?

20 A. In terms of the trainer?

21 Q. Right.

22 A. I'm going to ask you to clarify
23 because I want to make sure I'm answering your
24 question clearly.

1 Q. Sure. You said you were told it was
2 a requirement or you said it was a requirement that
3 there be two trainers. And I'm asking you, did
4 someone tell you that, and if so, who?

5 A. The regional vice president of AT&T,
6 Robin Feller; the director, Tracey Sartino; and it's
7 also documented.

8 Q. Did they use the word, requirement?

9 A. That position -- as far as I can
10 recall, that position has two training positions
11 that report to it. As far as I can recall, that's
12 the terminology that was used.

13 Q. But they did not use the word,
14 requirement or required?

15 A. It was required, yes. As far as I
16 recall, yes, it was required, as far as I recall at
17 this time.

18 Q. All right. Now, you took over the
19 Boston area from Mary O'Connor, correct?

20 A. That is correct, yes.

21 Q. And in addition, you were given the
22 Pittsburgh area?

23 A. Yes. Jeff Farr was the district
24 manager who had the Pittsburgh area, and yes, I did

1 have that.

2 Q. Is it your position that you took
3 over the work of two district managers?

4 A. Yes, it is.

5 Q. Is it your position that you took
6 all of Mary's work and all of Jeff's work?

7 A. Yes.

8 Q. Did either of them have any
9 responsibilities other than the ones you took over?

10 A. I don't -- if they had any other
11 responsibilities, as far as I recall, Mary O'Connor
12 only had the responsibilities I assumed. As far as
13 I recall, when Jeff transitioned the account --
14 well, he only did the one transition with me -- he
15 was taking over another territory.

16 Q. Then you were not aware that Mary,
17 at the time she handed off the Boston area to you,
18 also was responsible for a New York region?

19 A. Wappingers Falls and Ossining. I
20 acquired those. Wappingers Falls, New York, as well
21 as Ossining, New York. Mary lived in Wappingers
22 Falls.

23 Q. Did you ever do any work on those
24 systems?

1 O'Connor's folder.

2 Q. Okay, fair enough.

3 Did you ever tell Mary O'Connor that
4 you were the best district manager on the team?

5 A. No, I've never said that.

6 Q. Do you believe that you provided
7 good service to the Pittsburgh system?

8 A. Can I go back to the last question?

9 Q. Sure.

10 A. We were all new on our team. We
11 were all learning our job at the same time. How
12 could I be the best if we are all learning at the
13 same time?

14 Q. Let me ask it this way. Did you
15 tell Mary that you were the best or you thought you
16 were the best district manager on the team in the
17 fall of 2000 after you had been there a number of
18 months?

19 A. I've never said that. And if that's
20 something that Mary O'Connor said, that's a prime
21 example. Why would anyone -- I think it's hideous.
22 That's a prime example of something wrong.

23 Why would anyone say anything like
24 that? It's ludicrous. Why would I go to someone,

1 I'm the best? No, I've never said that.

2 Q. Did you feel that you were?

3 A. Did I feel that I was?

4 Q. That you were the best district
5 manager on the team.

6 A. Did I feel that I was the best?

7 Q. Right.

8 A. I don't know what anybody else was
9 doing. I certainly knew that I was working very
10 hard. I was trying to learn a job.

11 Q. Did you feel you did a good job
12 while you were there?

13 A. I certainly do, yes.

14 Q. Did you understand the Pittsburgh
15 system to be happy with your work?

16 A. Yes, I do.

17 Q. How about the Boston systems?

18 A. Yes, I do.

19 Q. Did you get along all right with
20 Jeff Levy, L-E-V-Y?

21 A. Yes, I did.

22 Q. In Pittsburgh, it was Maryann
23 Scarpaci; is that the correct name? She was --

24 A. Yes, Maryann Scarpaci.

1 Q. And she was the manager of the
2 system there?

3 A. She was not a manager of the system,
4 she was one of the managers.

5 Q. She was your contact person?

6 A. Yes.

7 Q. And you felt you had a good
8 relationship with her?

9 A. Yes.

10 Q. And you felt that she thought you
11 were doing a good job?

12 A. Yes.

13 - - -

14 (A brief recess was taken.)

15 - - -

16 BY MR. STACY:

17 Q. Are you ready?

18 A. Yes.

19 Q. Ms. McCoy, why did some district
20 managers have only one trainer assigned to them; why
21 did some have two; why did some have zero?

22 A. I really don't know. In terms of
23 zero, all district managers, as far as I know, had a
24 trainer. If they had zero, it's because they were

1 looking to hire a trainer.

2 Q. Was it your understanding that there
3 were periods of time where various district managers
4 would be without a trainer for that reason?

5 A. What I understand is that I didn't
6 have two trainers. I had one, and then she left,
7 and then I had the one who had the breakdown. So
8 she was gone. So I can only talk about my
9 experiences. I can't tell you anyone else's
10 experiences in terms of why they were down trainers.

11 Q. So you don't know whether other
12 district managers were down trainers or not,
13 correct?

14 A. As far as, I know, I'm sure they
15 were down trainers, but they were able to work
16 together. I don't even want to speculate. As far
17 as I know, everybody on my team had trainers but me.

18 Q. Did the other trainers on the team
19 do any work for you?

20 A. We had a few trainers on the other
21 team -- on my team who would sign up to help. It
22 wasn't consistent, though. A lot of times they
23 would cancel trainings or come back and complain
24 about the bottleneck at Logan Airport on the issues

1 history with trainers.

2 Q. Well, what part of Mary's territory
3 did you not get?

4 A. I got all of Mary's territory. I
5 got all of Mary's territory. When I came to the
6 company, Mary went to another team, Comcast, the
7 team that the regional vice president, Miles
8 McNamee, oversaw. So Mary O'Connor went to a whole
9 total different team.

10 Q. Is it your assumption that Mary had
11 one or more trainers?

12 A. I can't assume. I mean, that would
13 be like guessing. I have no idea. Mary had been
14 with the company for, I think, five years. If I'm
15 not mistaken, at least five years, I would say,
16 prior to my coming to the company. So I don't know
17 what Mary's history with trainers or what she did
18 with trainers.

19 Q. Was it your job -- your
20 responsibility to hire new trainers when you had
21 openings?

22 A. It was my understanding that it
23 would be a joint effort to hire new trainers, not
24 that it was my sole and primary responsibility. I

1 done. So I'm only one person. I'm not Superwoman.
2 I did everything I could, and I stayed late into the
3 evening. It was a part of a priority list, along
4 with everything else.

5 Q. Did other district managers take the
6 lead in contacting and screening applicants for
7 trainer positions?

8 A. They had trainers. I don't know
9 what other district managers did. The only district
10 manager that I can recall that put a lot of effort
11 to it was Julie Pieper, but her director took over
12 most of her responsibilities so that she had the
13 leisure time -- or not leisure, but she had the time
14 to fill that -- well, she still didn't fill the
15 position, I think, before I left the company, as far
16 as I know.

17 But her director -- she reported to
18 Janet, the other director that reported to Robin.
19 But her director, Janet, assumed all of her
20 responsibilities so that she could look for a
21 trainer. It helped her a lot.

22 Q. How do you know that?

23 A. She told me at the meetings. I was
24 informed of that information at one of our regional

1 meetings.

2 Q. By Julie?

3 A. Yes.

4 Q. When did Julie start with the
5 company?

6 A. Julie reported to Janet. They were
7 based in California, so I don't know. Julie has --
8 from what I understand, she has a background in the
9 industry, so I don't have any -- I mean, I guess
10 Sheryl could probably give you more information on
11 when she started with the company. I don't know.

12 Q. Do you know if she was with the
13 company when you started?

14 A. You know what, I don't know that. I
15 met her at a regional meeting, and that's -- you
16 know, that's all I know is that I met her at the
17 regional meeting.

18 Q. Now, you have claimed to the EEOC
19 that Starz Encore Group sabotaged your attempts to
20 hire a trainer, correct?

21 A. That's correct.

22 Q. Could you tell me the circumstances
23 that make you say that?

24 A. Certainly. I was promised, when I

1 decision to hire Todd Goldman. I was happy.

2 Q. Well, you knew that people could
3 change their minds, right?

4 A. I don't understand what you're
5 trying to imply.

6 Q. Well, since they told you that they
7 were going to hire Todd, wouldn't it be fair to say
8 they obviously changed their minds?

9 A. It would be fair to say, from a
10 professional standpoint, if there was a decision
11 that affected my job, that someone would have
12 contacted me to let me know. I don't know how to
13 comment on your question.

14 Q. Well, when you say sabotage, what do
15 you mean?

16 A. We were going to hire a trainer; it
17 didn't happen. That's just one example.

18 Q. What does the word, sabotage, mean
19 to you?

20 A. What it means, sabotage? Well, when
21 they destroy or prevent something from happening
22 through a destructive measure or any type of measure
23 that would bring harm to any situation.

24 Q. Do you believe they were racially

1 motivated when they decided not to hire Todd?

2 A. I absolutely believe that all of my
3 experiences with Starz Encore was racially
4 motivated, and specifically with Todd Goldman. Yes,
5 I do.

6 Q. What made you believe that the
7 situation with Todd Goldman was racially motivated?

8 A. Because of the culture of the
9 company. They did not want me there. I felt like
10 because of my race and my color, they wanted me
11 gone, and they felt that if I -- if they put all the
12 burden of doing all the work on me, that I would
13 disappear.

14 Q. The reason they wanted you gone was
15 because of your race --

16 A. Because of my race. The company has
17 a history -- I'm sorry, go ahead.

18 Q. Let me finish my question, and
19 please try to limit yourself to the question. I
20 know you have a lot to have say, and I certainly
21 understand that.

22 Is there anything specific that you
23 can point to that makes you think the decision not
24 to hire Todd Goldman was racial?

1 A. The mere fact that it was not
2 justified for the them not to hire him. The only
3 purpose for them not hiring Todd Goldman is so that
4 I can continue having a tremendous amount of work
5 load, more than my white female counterparts, and it
6 was extremely difficult to continue to take on that
7 burden.

8 Q. How do you know that was the only
9 reason?

10 A. How do I know that was the only
11 reason, it was the only reason. It's the culture of
12 the company. The company does not have -- was the
13 only black female district manager on my team.
14 Throughout the entire company when I was hired,
15 there was no other black female or male district
16 manager. I was the only one.

17 The history -- the retention of
18 keeping black employees of that company, you know,
19 there's -- obviously, there's some numbers. It's
20 extremely poor. It's very well-known throughout the
21 industry about Starz Encore's history with black
22 employees. They don't want black employees there.
23 They keep them there for a short period of time, and
24 then they terminate them.

1 Q. Is there anything specifically that
2 you can point to that makes you think that Robin or
3 Tracey were motivated by your race when they made
4 the decision not to hire Todd?

5 A. Just the hostility, the continual
6 hostility that I experienced, the combative-like
7 environment. I felt like they were trying to
8 discourage Todd from wanting to come to the company
9 because of the combative way that they handled his
10 interview.

11 It was extremely hostile. It was
12 extremely combative. Negative things were said.
13 Robin specifically said to Todd Goldman, as I recall
14 it, could you work for someone like Katrina? Take a
15 look at her. Could you work for her? He's a
16 prospective candidate. I'm an employee. That
17 conversation should have been directed to me.

18 Q. Did Robin and Tracey conduct that
19 interview differently than they did other trainer
20 interviews?

21 A. The trainer -- the only -- let's
22 see. The interview with Melissa Diehlman that I
23 came in on the tail end presentation was not done
24 like that. The trainer who had the breakdown and I

1 given different consideration because of the way I
2 came into the company.

3 Q. Was it your understanding that
4 Tracey and Robin made the decision to offer you the
5 job?

6 A. No. It was my understanding about
7 Tracey making the decision.

8 Q. Robin?

9 A. You know what, I really don't know
10 who made the ultimate decision to hire me. Robin
11 did call me up with the job offer, but I don't know
12 who specifically made the decision to hire me. But
13 Robin Feller, the regional vice president, not
14 Tracey Sartino, called me up with an offer.

15 Q. Do you have any reason to believe
16 that Tracey or Robin opposed your being hired?

17 A. I don't know. That's probably privy
18 information that I was not exposed to. I really
19 don't know.

20 Q. You don't either way?

21 A. I really don't. I wouldn't know
22 that.

23 Q. Who was Susan Lewis?

24 A. Susan Lewis, she was the regional

1 vice president for Comcast that took over after
2 Miles McNamee left and went to another position at
3 corporate.

4 Q. And Susan was an African-American
5 woman, correct?

6 A. She -- yes, she was. She was a
7 black female who also was terminated from the
8 company.

9 Q. I'm only asking was she an
10 African-American woman.

11 A. Yes, she was.

12 Q. How do you know that she was quote,
13 terminated by the company?

14 A. I think everybody throughout the
15 industry knows that she was terminated from the
16 company.

17 Q. How did you find that out?

18 A. People called and asked why was she
19 terminated. People I would run into randomly said
20 they heard she was terminated from the company.

21 Q. What did you tell them when they
22 asked why?

23 A. They actually knew information that
24 I had not known, and I was -- I was really

1 disappointed.

2 Q. What did they tell you?

3 A. That she was terminated by Starz

4 Encore, from the company.

5 Q. For what reason? You said they told
6 you the reasons why.

7 A. They told me that she was
8 terminated. Let me clarify. Everybody throughout
9 the industry knows that Susan Lewis was terminated.
10 Susan sat on the board of WIT, Women in Cable and
11 Telecommunications, I believe, and was very familiar
12 with a lot of people throughout the industry. And
13 everybody knows that she was terminated. Where they
14 got their information from, I don't know.

15 Q. If she was terminated, do you know
16 why?

17 A. Because of her race. I would say
18 that Susan was terminated because of her race.

19 Q. Do you have any firsthand knowledge
20 of the circumstances of her leaving the company?

21 A. I don't have any -- I was not
22 employed at the company upon Susan Lewis's
23 termination. I believe Susan Lewis was terminated
24 one or two months after my termination.

1 Q. How do you know that?

2 A. That's one of the things that I was
3 told.

4 Q. Has anyone told you the
5 circumstances of her leaving, specifically?

6 A. No.

7 Q. Do you know of any problems that she
8 had at the time she left, problems with the company
9 or the company had with her?

10 A. No.

11 Q. Do you expect that Susan Lewis will
12 testify on your behalf in this case?

13 A. Do I expect that?

14 Q. Yes.

15 A. I don't know. I would love to ask
16 her. She did not work on my team. She was on the
17 Comcast team. She had no direct -- she was familiar
18 with the amount of work that I had to do and that I
19 was doing and she did say to me that the company's
20 aware that you are doing a lot of work by yourself
21 and you know, that you need help, you need support.
22 The company is aware of that.

23 Q. In fact, while you were there, Susan
24 was a director in the Philadelphia office and then

1 was promoted to vice president?

2 A. That's correct.

3 Q. Why do you think they would promote
4 her to an officer position if they were biased
5 against her because of her race?

6 A. From my understanding, Miles McNamee
7 needed to -- needed to move. His family was not
8 happy with the area. I think out of desperation of
9 needing to fill the position to get somebody to
10 assume that role, and Susan Lewis did report
11 directly to Miles McNamee, I believe that's why
12 Susan Lewis was handed that position.

13 Q. Was there a shortage of white people
14 to give that job to?

15 A. You're asking me to guess if there
16 was a shortage of white people?

17 Q. Yes. I'm wondering why you think
18 they were desperate to fill the position, so
19 desperate that they promoted an African-American?

20 A. She was the director. She worked
21 directly with Miles McNamee. I believe that it
22 would be a racial decision not to promote her, if
23 they did not promote her to that position.

24 Q. But they did, right?

1 with that they had to split me with other systems
2 because they told me, Jeff Levy and the other people
3 that we met, Mary was there.

4 Q. Well, at any rate, the meeting that
5 you ended up having to do yourself with Jeff Levy
6 and those people went well enough that you still
7 were successful in servicing them, right?

8 A. The meeting, I felt, was very
9 successful. I was only three weeks old with the
10 company. I was not with the industry. All I could
11 do is present various questions to them, and -- but
12 I do feel, to answer your question, yes, I felt that
13 the meeting got -- we got off to a great start with
14 the meeting and the whole relationship building.

15 Q. In terms of your feeling that your
16 attempt to hire trainers was sabotaged by the
17 company, you've told me about the Todd Goldman
18 situation. Is there anything else that you can
19 specifically point me to that you believe was
20 sabotaged by the company?

21 A. Well, I believe, when Tracey Sartino
22 did not show up for that meeting, that very
23 important -- Boston is like one of the top key
24 accounts. When she did not show up, that was --

1 that was very, very devastating, and I believe that
2 was a deliberate act on her part not to show up for
3 that meeting with me, not to give me the support, at
4 least calling over to the restaurant and letting the
5 bill be sent to her.

6 The fact that the rental car was in
7 her name, and I could not even -- I had to go
8 somewhere else and find a rental car. I had never
9 been to Boston before. I had to find and feel my
10 way. I had nothing. She had all of the information
11 with her. All I had was a few bullet points that I
12 jotted down after I made the effort.

13 That was sabotage, and it was done
14 deliberately.

15 Q. But it had nothing to do with your
16 trying to hire a trainer, right?

17 MS. TIMM: Counsel, I don't know
18 that she's done with her answer.

19 MR. STACY: Well, she's giving a
20 very long answer to a question that I didn't
21 ask. I think she just didn't hear me right.

22 MS. TIMM: I think she's just giving
23 you an answer you don't want. Before you
24 were saying her answers were too short, now

1 her answers are too long.

2 MR. STACY: I never said they were
3 too short.

4 BY MR. STACY:

5 Q. Let me just clarify.

6 MS. TIMM: I'm asking you to allow
7 her to answer the question.

8 MR. STACY: I will, but we've got a
9 disconnect going here.

10 BY MR. STACY:

11 Q. What I'm trying to ask you about is,
12 were there any other occasions where they sabotaged
13 your efforts to hire a trainer?

14 A. To hire a trainer?

15 Q. Yes. I know you've got feelings
16 about that Boston incident, and that's something we
17 have talked about and we can talk about again, but
18 that didn't relate to a trainer.

19 A. This is a new question than you
20 phrased it to me earlier. You said other efforts of
21 sabotage. You did not say specifically as
22 pertaining to a trainer.

23 Q. Well, then maybe it's my fault.

24 A. And there are other incidents. As

1 it pertains to a trainer, the mere fact that the
2 support didn't come for hiring a trainer to the
3 end. No effort was made on the company to give me
4 any assistance in helping to hire a trainer.

5 Just like the process that I went
6 through, it was a group process; it was several
7 people involved; it was several conversations,
8 several meetings. I didn't get that. Whether it
9 was a trainer or district manager, because of the
10 extensive hiring process, you don't fill out an
11 application and you get the job. There was much,
12 much more involved.

13 Q. Specifically, what support did you
14 not get that you feel you should have gotten or
15 would have gotten had you been a white district
16 manager in terms of hiring a trainer?

17 A. The example that I gave to you
18 before with Julie Pieper, who was a former district
19 manager from California, how her director took over,
20 assumed half of her responsibilities so that she
21 could do things. They shared; they worked
22 together. It was a joint effort. She was not --

23 Q. Just so I understand, what you're
24 saying then is that Tracey not doing that --

1 MS. TIMM: Okay. You're doing it
2 again. You're cutting her off.

3 MR. STACY: Well, the answers just
4 go on and on and on, and it's beyond the
5 scope of the question.

6 MS. TIMM: Well, before you said she
7 was being evasive, I think. Now that she's
8 giving you very detailed --

9 MR. STACY: Don't raise all that
10 again. You know, we're getting along fine.
11 Let's keep it up.

12 MS. TIMM: No. I'm saying -- I'm
13 just recalling, before you were saying you
14 were not getting what you wanted. Now that
15 she's giving you very detailed explanations,
16 that's not acceptable either. I'm just
17 asking you to allow her to finish her
18 answer.

19 BY MR. STACY:

20 Q. Go ahead.

21 A. That was specifically it, the
22 example that I mentioned to you, yet again, with
23 Julie Pieper, how the support was given to her, how
24 toward the end when we finally were able to hire the

1 trainer, when we all worked together as a group and
2 I was able to hire the two trainers that I hired,
3 that was a group effort. That's the way it should
4 have been done initially. It never should have
5 lingered on as long as it did. It should have been
6 a group effort from the very beginning.

7 Q. What makes you think that that was
8 intentional sabotage by someone?

9 A. Because we did not get a trainer.
10 We were not able to take the time and work together
11 as a group. It was not a -- the company knows that
12 I needed a trainer; I need a trainer.

13 Q. Couldn't there have been a reason
14 other than sabotage?

15 A. What would that be?

16 Q. You can't think of any other reason?

17 A. They didn't want me there because of
18 my race, specifically.

19 Q. That's the only reason for it that
20 you can think of?

21 A. That is the only reason.

22 Q. What makes you think that the
23 company not providing you more people to help with
24 the hiring process was racially motivated?

1 A. It's not a one-person job. The
2 company knows that. It's not a process that they
3 do. It's a group process in hiring. It's not a
4 one-person job to try and hire trainers or any
5 employee for that company. It's not a one-person
6 job.

7 Q. How do you know that the same kind
8 of problems didn't happen to non-African-American
9 district managers?

10 A. They all had trainers.

11 Q. I'm talking about --

12 A. I can only specifically talk about
13 my team. I can't talk about anybody else's
14 experience. I can only talk about my experience.
15 They all had trainers. I had to go on the process
16 that was done when I was hired, and then when I
17 needed to hire, nobody was there. I did not get the
18 full support that was needed.

19 Q. Was there any occasion, while you
20 worked there, that there were open trainer positions
21 elsewhere on the team?

22 A. To be perfectly honest, I don't
23 really recall if there was any opening. If there
24 was an open position, they may have had one trainer,